



DECISION OF

The Hon. Lord Fairley

**ON AN APPLICATION FOR PERMISSION TO APPEAL
(DECISION OF FIRST-TIER TRIBUNAL FOR SCOTLAND)**

IN THE CASE OF

Social Security Scotland

Appellant

- and -

DM

Respondent

FTS Case reference: FTS/SSC/AE/23/00879

21 May 2024

Decision

Permission to appeal is granted on the issue of whether or not, on the facts found by it, the FTS should have considered the applicability to the respondent of daily living descriptors 8(d) or 8(e) in Part 2 of Schedule 1 to the Disability Assistance for Working Age People (Scotland) Regulations 2022 (SSI 2022/54).

Reasons for decision

Background

1. The respondent made an application for Adult Disability Payment (“ADP”) under the Disability Assistance for Working Age People (Scotland) Regulations 2022 (SSI 2022/54).



He was initially assessed as being entitled to 6 points for assistance with daily living activities and 4 points for mobility activities. He applied for redetermination. The redetermination decision removed 2 of the points previously awarded for daily living activities, leaving him with 4 points for daily living, 4 points for mobility and a refusal of his application for benefit. The points ultimately awarded for daily living were for descriptors 4(c) and 9(b) only.

2. The respondent appealed to the First-tier Tribunal (“FTS”). In its written response to that appeal, the appellant conceded that descriptors 1(d) and 6(c) of the daily living activities were also met. It accordingly invited the FTS to make an award in respect of daily living at the standard rate based upon a points total of 8. The appellant continued to oppose the appeal insofar as it related to the mobility component.
3. On 7 March 2024, the FTS allowed the appeal. In light of the concession by the appellant, it concluded that the respondent met the requirements of descriptors 1(d), 4(c), 6(c) and 9(b) in relation to daily living. That resulted in an award of 8 points, and an entitlement to the daily living component at the standard rate.
4. The FTS also concluded that the respondent met the requirements of the mobility descriptors 1(d) and 2(b). That resulted in an award of 14 points and an entitlement to the mobility component at the enhanced rate.

Grounds of appeal

5. The appellant does not seek to challenge the decision of the FTS in relation to the mobility component, nor does it seek to challenge the conclusions of the FTS about the applicability of daily living descriptors 1(d), 4(c), 6(c) and 9(b).
6. The single proposed ground of appeal is that, on the facts found by it, the FTS ought to have considered whether or not descriptors 8(d) or 8(e) applied to the respondent such that his total points for daily living should have been either 12 or 16. The appellant submits that, in light of the findings in fact made about mobility descriptor 1(d), the FTS ought also to have considered the applicability of daily living descriptor 8(d) or 8(e). Had it done so, that might have resulted in an award in respect of the daily living component to the respondent at the enhanced rate.

The FTS decision

7. At paragraph 15 of its reasons, and in the context of considering mobility descriptor 1(d), the FTS stated:



“It is clear from the information provided by [the respondent’s] GP that he had significant learning difficulties and that he has never been able to work as a consequence of these. [The respondent] has very poor literacy and candidly concedes that he would not be able to use a map in any meaningful way to assist him to navigate unfamiliar territory. He has also gone on to indicate that his anxiety would be at a very high level were he to attempt to do so.”

Law

8. The appellant submits that the case of *SE v. SSWP (PIP)* [2021] UKUT 1 (ACC) may be persuasive to the extent that it provides guidance on the applicability of daily living activity 8 of the PIP Regulations.
9. Permission to appeal from the FTS to the UTS can be granted only where the appellant identifies an arguable material error on a point of law (*PD v Midlothian Council* [2021] UT 19 para 10). The test of “arguability” is a relatively low hurdle (*Ramirez-Stich v. Strachan* 2020 UT 15 at para 6). Absence of consideration by the FTS of a point which obviously arose from the evidence is, in principle, capable of constituting an error of law.

Permission decision and reasons

10. In the circumstances of this case, that issue is arguable to the low standard required for permission, that having made the findings it did at para 15, the FTS ought to have gone on to consider the possible applicability of daily living descriptors 8(d) or 8(e). Permission to appeal is therefore granted on that single issue.
11. It was conceded on behalf of the appellant that, whatever the outcome of this appeal and any consequent remit to the FTS which may arise, the appellant will not seek to re-open or challenge the decisions previously made by the FTS in relation to daily living descriptors 1(d), 4(c), 6(c) and 9(b) or mobility descriptors 1(d) and 4(b). In practical terms, therefore, there is no outcome to this appeal or any consequent remit to the FTS which will result in the respondent receiving a lesser amount of benefit than was awarded to him by the FTS on 7 March 2024.

The Hon. Lord Fairley